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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/481,043

01/11/2000

RANDALL L. SIMPSON

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EXAMINER

FELTON, AILEEN BAKER

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

01/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/481,043

Applicant(s)

SIMPSON ET AL.

Examiner

Aileen B. Felton

Art Unit

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/31/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,26-38,40,41 and 45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,26-38,40,41 and 45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. Per Applicant's request, the finality of the previous office action is withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 26-38, 40, 41, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sayles (4952341) or Benziger (4481371) in view of the article to Hench et al entitled "The Sol Gel Process", the article from Science and Technology Review, and the admitted prior art in Applicant's specification (page 13, lines 5-23).

Sayles discloses that "[b]urning rates of propellants are also influenced by surface area and particle sizes of the oxidizer ingredients. Porosity is another factor which increases burning rate of solid propellant grains" (col. 1, lines 50-57). Sayles also uses ammonium perchlorate (table 1). Alternatively, Benziger discloses that "it has been generally known that the sensitivity of solid explosives can be increased by decreasing the particle size of the material and correspondingly increasing the surface area per unit weight of the material (col. 1, lines 40-45).

The article to Hench et al discloses various sol-gel methods and indicates that sol-gel processing is useful for making materials with high surface area that are porous. (see particularly pages 33, 35-37, 42, 57, 65, and 68).

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The article from Science and Technology Review (pg 23) teaches the use of a sol-gel process that is less expensive.

Applicant's specification admits that the sol-gel process is "known in the art for producing a variety of metal oxide, organic, and carbon aerogels and xerogels, and these materials have been utilized for various purposes. The composition of the aerogels or xerogels is varied by the sol-gel processing, whereby various surface areas, densities, etc. can be produced" (page 13, lines 5-23).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the sol-gel processes as taught by the Science and Technology article, article to Hench et al, and the admitted prior art in Applicant's specification with the explosives disclosed by Benziger and Sayles since Benziger and Sayles both disclose that it is known in the explosive and propellant art to use high surface areas and porosity to improve burn rate and since the articles and admitted prior art teach that the sol-gel processes are known ways to make materials with high surface area and porosity.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

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F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1, 26-38, 40, 41, and 45 are rejected on the ground of nonstatutory

obviousness-type double patenting as being unpatentable over claims 1-11 of U.S.

Patent No. 6666935. Although the conflicting claims are not identical, they are not

patentably distinct from each other because both claim the similar method of using sol-gel processing with fuel and oxidizer materials.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 32, and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by

the article from Science and Technology Review.

The article from Science and Technology Review (pg 23). teaches the claimed sol-gel process that is less expensive and uses materials such as carbon as the fuel and the oxidizer is provided by the air in the aerogel. Carbon and air can also function as propellants.

Allowable Subject Matter

8. The indicated allowability of claim 26 is withdrawn in view of the newly discovered reference(s). Rejections based on the newly cited reference(s) are shown above.

Response to Arguments

9. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

10. Regarding claims 1, 32, and 45, the article from Science and Technology Review clearly shows the use of carbon with sol-gel process and the oxidizer is provided by the air in the aerogel. These materials can also function as propellants.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aileen B. Felton whose telephone number is 571.272.6875. The examiner can normally be reached on Monday-Friday 6:30-4:00, except alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571.272.1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aileen Felton/
Primary Examiner
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